

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

V. Higgins - Stein

ACG.

8268

FILE: B-193031

DATE: November 3, 1978

MATTER OF: Data Controls/North Inc.

DIGEST:

Protest concerning small business size status of bidder is not for consideration by GAO since by law it is matter for decision by SBA.

Data Controls/North Inc. (Data Controls), protests award to either of the two lowest bidders under invitation for bids (IFB) No. H-4327, a small business set-aside, issued by the Department of Housing and Urban Development (HUD). The protester argues that the low bidder is nonresponsive and that the second low bidder does not qualify as a small business concern. As third low bidder, Data Controls contends it should be given the award upon disqualification of the first and second low bidders.

We understand that HUD has rejected the low bid and therefore we consider this portion of the protest moot.

With regard to Data Controls' protest of award to the second low bidder, under 15 U.S.C. § 7(b)(6) (1976) (amended 1977), the Small Business Administration (SBA) is empowered to conclusively determine small business size status for Federal procurement and sales purposes. The matter is for resolution by SBA and not this Office, see Walco Power Service, Inc., B-190128, September 29, 1977, 77-2 CPD 246, and therefore should be brought directly to the attention of the contracting officer under Federal Procurement Regulations 1-1.703.2(a) (1964 ed. amend. 192) for referral to the SBA.

The protest is dismissed.

Paul G. Dembling
Paul G. Dembling
General Counsel